

**EXHIBIT B**

1 due respect to counsel, I said let's say it's 25 percent.  
2 You've really got to be able, if you're going to do an  
3 estimate, you can't just -- A, it's got to be -- it really has  
4 to represent these people, in a sound statistical fashion.

5 THE COURT: But, you know who the pre-petition claim  
6 holders are.

7 MR. BERNICK: We know who they are.

8 THE COURT: Okay.

9 MR. BERNICK: We know who they are, but then if you  
10 wanted to use it -- if you don't take that snapshot -- and  
11 here's the pre-petition people -- and say, would we be content  
12 with sending out the claim -- you know, the questionnaires, or  
13 whatever it is that we're going to use -- it could be  
14 questionnaires, to gather information on a consistent basis,  
15 same questions, et cetera, et cetera, then use for purposes of  
16 the analysis.

17 Yes, we could do that if we had assurance A, they all  
18 return the questionnaires and B, that they understood that  
19 unless they did return the questionnaires, their claims were  
20 not going to be allowed --

21 THE COURT: Well --

22 MR. BERNICK: -- and it's -- and --

23 THE COURT: -- doesn't it -- I think for estimation,  
24 that's not really the issue. I mean, if I determine --

25 MR. BERNICK: Let me just --

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1           THE COURT: If I determine what the likely claims are  
2 to be filed against the trust, which the debtor would fund --

3           MR. BERNICK: Yes.

4           THE COURT: -- isn't that the purpose? I need to  
5 know the value of the claims that are likely to be filed  
6 against the trust.

7           MR. BERNICK: Right.

8           THE COURT: Okay.

9           MR. BERNICK: But the only way that you can get to  
10 the trust, going forward, is to be able to have some basis of  
11 saying, here's what the claim's exposure is as time goes  
12 forward.

13           THE COURT: But, it's been done by -- at least ten,  
14 maybe more, in Bankruptcy Courts, without proofs of claim  
15 before.

16           MR. BERNICK: No, no, no. Because, that's all  
17 because they used --

18           THE COURT: It's being done in Owens, right now.

19           MR. BERNICK: That's all because they used this  
20 historical extrapolation from settlement.

21           THE COURT: Well, that's what Mr. Lockwood's going to  
22 use.

23           MR. BERNICK: I know that's what Mr. Lockwood wants.

24           THE COURT: Okay.

25           MR. BERNICK: And there's no question, let's just be

1 very --

2 THE COURT: Well, surely the debtor knows what it's  
3 own non-settlement history is. I mean, you've got the records  
4 of the cases that you actually litigated.

5 MR. BERNICK: No. See that's not -- it's again, Your  
6 Honor, apples and oranges. This history is all born of a  
7 process that is in the State Court tort system.

8 THE COURT: But, those are non-judgment creditors.

9 MR. BERNICK: What?

10 THE COURT: These -- this creditor group,  
11 pre-petition -- pre-filing creditor group that you're talking  
12 about are non -- are creditors who have not yet attained  
13 judgments.

14 MR. BERNICK: I understand. But, let me --

15 THE COURT: Okay. So --

16 MR. BERNICK: Let's be concrete about it. In a given  
17 year, Grace gets 20,000 claims.

18 THE COURT: Right.

19 MR. BERNICK: Okay. Notwithstanding what Mr.  
20 Lockwood says, since the last, at least the last five years,  
21 overwhelmingly, those claims were settled on an inventory  
22 basis. They never even make their way onto a docket.

23 THE COURT: Okay.

24 MR. BERNICK: Okay. So, if Grace gets 20,000 claims,  
25 it then makes arrangements with a bunch of different law firms

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1 that say, I will pay X-number of your claims, or Y-dollars of  
2 your claims, if you provide me the following.

3 And what the plaintiffs are willing to agree to, as  
4 part of that inventory deal, in terms of what they provide,  
5 varies widely, but by and large it is minimal, and in our view,  
6 totally unreliable.

7 It's not a question of being defrauded. The better  
8 word is extorted. We didn't have any choice but to do it.

9 THE COURT: Now, wait. Not --

10 MR. BERNICK: No -- I'm sorry.

11 THE COURT: Both of you stop.

12 MR. BERNICK: Okay.

13 THE COURT: We're not talking fraud. We're not  
14 talking extortion. We're talking --

15 MR. BERNICK: That's --

16 THE COURT: -- a business decision --

17 MR. BERNICK: It --

18 THE COURT: -- by an operating company, to settle a  
19 claim, rather than going into litigation --

20 MR. BERNICK: Your Honor, respectfully --

21 THE COURT: -- end of story.

22 MR. BERNICK: Respectfully, Your Honor, I would have  
23 to tell you that that is not the reality. Yes, it's a business  
24 decision.

25 THE COURT: They didn't agree to the settlements?

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1 MR. BERNICK: Hold on. It is a business decision.

2 THE COURT: They didn't agree to the settlement?

3 MR. BERNICK: No. No. They agreed to the --

4 THE COURT: Okay. End of story.

5 MR. BERNICK: No. Well, I hate to push you on a  
6 little bit, but I really have to.

7 There was no choice but to enter into those  
8 settlements. None whatsoever. You can't litigate 20,000  
9 claims. You can't even litigate 1,000 claims a year.

10 THE COURT: But, you're asking me to litigate  
11 118,000.

12 MR. BERNICK: That's because we are -- that's -- that  
13 is the basic problem that we have, is that we have no choice in  
14 this case, under the law, but to abandon this system. This  
15 system does not apply in this Court. It does not.

16 And what -- the only -- what they're saying that the  
17 estimate has to be is, basically take the data that resulted  
18 from this system and say, that is the data that is dispositive  
19 of now -- of what the claim is worth in this Court. If Your  
20 Honor rules that way, that's fine.

21 We believe that that's completely contrary to the law  
22 and would have no -- it would mean that this bankruptcy is  
23 meaningless.

24 There's no question but that, if you take the  
25 experience in the tort system, having to pay all that we did,

1 and you extrapolate it, of course we -- we're out of money.

2 There's no question about that.

3           Why is it that we filed in the Bankruptcy Court to  
4 begin with? It was to escape the system that didn't work. And  
5 we'll be able to demonstrate that it didn't work. Because,  
6 there's no question about it. We followed the rules, the rules  
7 of evidence and the rules of discovery.

8           We don't have to be content with this process and the  
9 data that results from the process, which doesn't answer the  
10 questions that we have.

11           THE COURT: But look. Here's the problem with the  
12 bar date. Let's just assume, for a moment, that we set a bar  
13 date for pre-petition asbestos creditors. Okay?

14           MR. BERNICK: Right.

15           THE COURT: And you get in your -- a perfect world,  
16 all 118,000 pre-petition creditors file a claim and  
17 traditionally three percent of them are current Mesothelioma  
18 victims, you know, another ten percent has some other form of  
19 cancer, right down the statistical charts. It all fits  
20 perfectly according to everything that -- the published  
21 statistics. Just for purposes getting to this analogy. Okay.

22           I still have a large, in your view, asymptomatic  
23 base.

24           MR. BERNICK: Right.

25           THE COURT: It still has to be valued. How's it

1 going to be valued?

2 MR. BERNICK: Well, the way that it's going to be  
3 valued is that we, and now kind of getting into the filters  
4 when we say, I don't think it's going to be that hard to get  
5 that information, under these questionnaires. They fill out  
6 the questionnaires. They've got to fill out questionnaires all  
7 the time.

8 THE COURT: Okay. But, let --

9 MR. BERNICK: Let's assume that --

10 THE COURT: Let's stick to the subject.

11 MR. BERNICK: -- that we got all that. Okay.

12 We then have to break out the questions. We're going  
13 to have questions just like the questions that were asked of  
14 the PD claimants. Tell me what particular product you were  
15 exposed to and where you were exposed to it? A lot of these  
16 people won't be able to do that appropriately.

17 And they won't be able to identify -- they get washed  
18 out right away. They won't even -- they shouldn't even be  
19 making claims at all.

20 A huge number of people, we believe, will be wiped  
21 out because the medical data that we would ask to be submitted,  
22 to support their claim, doesn't meet the basic requirements  
23 that are set forth in the medical screening procedures  
24 themselves.

25 Now, to give you an example, all those non-malignant

1 claims, they rely on "B" Readers. "B" Readers that are hired  
2 by the plaintiffs --

3 THE COURT: Okay. But, this process that you're  
4 talking about, essentially requires what I said earlier, an  
5 omnibus objection to claim procedures, whereby I am actually  
6 going to be determining the allowance. Not necessarily the  
7 value, but the allowance of each specific claim.

8 Then, we get this database of existing pre-petition  
9 claims. That exact database, however, is not Grace's entire  
10 pre-petition history, to show what, going forward, the likely  
11 future claims against the debtor will be. It may set the value  
12 that Grace has to put in to satisfy --

13 MR. BERNICK: Well, I'm --

14 THE COURT: -- existing claims.

15 MR. BERNICK: I'm -- we're on the seventh --

16 THE COURT: So, it's irrelevant to the estimation  
17 process.

18 MR. BERNICK: No. That's how you get there. The  
19 only way to be able to extrapolate to the future is to have a  
20 baseline from which you extrapolate.

21 THE COURT: You do have a baseline. You've got a  
22 20-year history.

23 MR. BERNICK: No, no. But, the -- you've got a  
24 baseline, but the baseline includes a lot of stuff that's not  
25 useable in this Court, for purposes of the projection.

1           But, Your Honor, let's -- like you would --

2           THE COURT: You know the reason I think it may be  
3 useful, Mr. Bernick? It has nothing to do with the rules of  
4 evidence, it has to do with the practicality of a plan  
5 confirmation process.

6           The reality is that some of these people will have  
7 claims -- in the tort system, will have claims that will  
8 sustain a judgment. I mean, it's happened in the past.

9           MR. BERNICK: Right.

10          THE COURT: So, it likely will happen in the future,  
11 if you ever get back into the tort system.

12          MR. BERNICK: Your Honor, hear me --

13          THE COURT: And so the settlement numbers that the  
14 debtor, in it's business judgment, whether it views that it was  
15 extorted into that process or not, set some parameters within  
16 which people who have similar claims in the future may realize  
17 that they're not going to be able to get much higher of a  
18 distribution through the trust, because that's all the debtor  
19 was willing to pay before the bankruptcy hit.

20          MR. BERNICK: I completely agree with that. I mean,  
21 that's why the sequence is, I think, is exactly as I indicated.  
22 The issue is not whether there's any -- it's not whether  
23 there's no relevance to this. There is some relevance.

24          But, the issue is, at what point do you apply it.  
25 And what we're saying is, that under the rules, you apply these

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1 filters to end up with a population that's a subset of the  
2 population that historically has been claiming against the  
3 company.

4           Figure out, then, how many people will be added to it  
5 in the future. Maybe you can use an epidemiological curve.  
6 Maybe you can use past trends. But, you're working with a  
7 smaller population, whose claims do not have a fundamental  
8 legal problem.

9           And that's a very, very important thing to do, is to  
10 get to that point. That's the whole reason that we want the  
11 questionnaires, is to end up with that sub-population.

12           How then do we value each of those claims? I think  
13 that there probably is relevance from past history, in terms of  
14 how you value those claims, those individual claims.

15           How do you move going forward? You're going to have  
16 to do some kind of extrapolation. We don't quarrel with that.  
17 What we quarrel with is that, for purposes of establishing the  
18 liability, that the rules that apply to liability get thrown  
19 out the door. They can't be thrown out the door.

20           The whole purpose of the bar date is to get  
21 information on a claim form, and the information on the claim  
22 form then to sort out the wheat from the chaff of people who  
23 may in fact have a claim.

24           We're not saying there aren't people that have  
25 claims. There are people that got Mesothelioma from exposure

1 to Grace asbestos. There are people who got asbestosis. There  
2 are people that got lung cancer. What we're trying to do is  
3 find out who they are and what subset of the population they  
4 are.

5 You then have a -- isolated them, and you've got to  
6 do it in a representative and sound way, and get the data in a  
7 sound fashion. You then can go forward to extrapolate, in the  
8 future, how many people are going to be coming into the system  
9 and you can also develop values on the basis of prior  
10 settlement experience.

11 The only way that -- the only reason that Mr.  
12 Lockwood and I disagree is that he wants to include, in this  
13 process, this big -- from here, of people who made it through  
14 the system before, because it was what it was.

15 Whereas, what we're saying is, no. Now the rules  
16 have to apply, we've got to do a filter to find out the real  
17 claimants.

18 That is why, incidentally, we provided in the plan  
19 this class of people. These are the class of people that we  
20 expect to pay. These are the people who we want to fund. The  
21 way that we differentiate these folks from these folks is  
22 through the questionnaires.

23 THE COURT: Well --

24 MR. BERNICK: So, we're going to estimate. We're  
25 going to estimate using the models. You know, there are things

1 that can be done.

2           But, by and large, the big difference is that we  
3 don't want to pay people that we're not legally obliged to pay,  
4 because of the fact that -- have to pay them simply because  
5 they would have gotten paid before. That is the problem that  
6 we have to solve in this case.

7           THE COURT: Well, Mr. Lockwood, it seems to me that I  
8 can sort of compromise between these two approaches and get to  
9 a legitimate estimation hearing.

10          It seems to me that if the debtor thinks that it has  
11 some value to do a questionnaire, and you know, the form of  
12 discovery, I think, is somewhat within the discretion of the  
13 Court and we could treat it as though it's a series of  
14 interrogatories.

15          It's not going to be any 50 pages, I assure you.  
16 But, coming down to a reasonable type of questionnaire to get  
17 some information, so that the debtor's experts can decide what  
18 the debtor thinks is a proper valuation, it may have relevance  
19 to the committee. The committee may choose to use it for  
20 different purposes, I don't know. But, I'm not sure that it  
21 hurts to get that step done.

22          But, I do agree with you, that the appropriate way to  
23 do this is through a battle of experts. So, whatever spin the  
24 experts put on the questionnaire, maybe they'll be the same  
25 spin. Maybe it won't be the same spin. I don't know. But, I

1 think that should be an expert analysis function that goes  
2 forward.

3 MR. LOCKWOOD: Well, we can certainly try and work  
4 with the debtor on the questionnaire, in terms of -- to sample  
5 118,000 people, you don't need to have 118,000 questionnaires.  
6 I mean, Mr. Bernick has been tossing around statistical  
7 references for extrapolating things, and you don't need 100  
8 percent of the presents, to extrapolate to the futures.

9 You need whatever the experts would tell you would be  
10 a sufficient sample to get -- have it be representative --

11 THE COURT: Well, maybe --

12 MR. LOCKWOOD: -- but the one thing I --

13 THE COURT: I'm not sure it hurts to send it out to  
14 all 118,000.

15 MR. LOCKWOOD: Well, it depends --

16 THE COURT: In fact --

17 MR. LOCKWOOD: -- on what the sanctions are for not  
18 responding to it.

19 THE COURT: Well, if there's a bar date, it'll be a  
20 --

21 MR. LOCKWOOD: Well, that's --

22 THE COURT: -- disallowance of claim.

23 MR. LOCKWOOD: -- the point.

24 THE COURT: I mean --

25 MR. LOCKWOOD: So, then you're basically putting us

1 in an allowance disallowance position.

2 And let me just address something on Mr. Bernick's  
3 chart, if I might, Your Honor, so that we understand exactly  
4 what's going on here.

5 THE COURT: Well, there may be another way to do it,  
6 Mr. Lockwood, without requiring a bar date.

7 MR. LOCKWOOD: I can't find it.

8 THE COURT: It -- I take it that most of the 118,000  
9 are represented by counsel.

10 MR. LOCKWOOD: I assume so, and --

11 THE COURT: And it seems to me that what we can do,  
12 perhaps, is get each counsel to contact each client and make  
13 sure that, in fact, that client understands that whatever the  
14 estimation numbers are, will be binding on them.

15 And if they choose to file their own questionnaire,  
16 fine. And if they don't, fine. But, there will have to be  
17 some representative sample.

18 Experts can probably predict what that number has to  
19 be. And if we don't get it, then I will do some sort of an  
20 order that imposes a bar date.

21 But, it seems to me that if the attorneys are willing  
22 to go back to their clients and file something that says my  
23 client understands that there is going to be an estimation  
24 hearing and that they will be bound, maybe I don't need a bar  
25 date.

1 MR. LOCKWOOD: Well, let me --

2 MR. BERNICK: Anyway that we can get reliable  
3 information, is fine. But, we're real skeptical of the idea  
4 that you can just rely upon the claimant. There has to be  
5 something issuing from this Court that does create a need for  
6 them to respond. If you have dropout from this process, then  
7 it starts to create bias issues.

8 THE COURT: Oh. All right. We -- I think we can  
9 handle that issue, because I may not be able to impose  
10 something directly on the claimant.

11 But, as I indicated about the 2019 Statements, I have  
12 lots of counsel who are currently subject, as officers to this  
13 Court, to my orders. So, I think I can deal through counsel,  
14 if need be.

15 MR. LOCKWOOD: Your Honor --

16 (Pause)

17 MR. LOCKWOOD: Your Honor, we should be clear about  
18 what the debtor wants this estimation process to entail, from  
19 the debtor's side.

20 This thing over -- this line over here, liability  
21 filters, with the boxes. The debtor, without ever actually  
22 presenting this to Your Honor for resolution, asserts that  
23 there are various legal defenses which they will be able to  
24 assert for -- across the board on cases, which will reduce the  
25 number to Mr. Bernick's 25 percent.

1           Some of those legal defenses we could actually tee  
2 up, even in advance of an estimation hearing. For example, the  
3 proposition that in this estimation process the Bankruptcy  
4 Court could determine that people that didn't have a certain  
5 level of impairment did not have a State Law right to payment,  
6 for example.

7           Because, what Mr. Bernick really is trying to do  
8 here, at the end of the day, in violation frankly, of SGL  
9 Carbon, is to use this bankruptcy case as a mechanism for  
10 trying to litigate his way out of a problem that he was unable  
11 to --

12           THE COURT: No.

13           MR. LOCKWOOD: -- litigate his way out of in the  
14 torts.

15           THE COURT: No. Let's stop. All I'm trying to get  
16 to is an estimation process. It seems to me that experts may  
17 disagree about the appropriate methodology to use. That will  
18 be a Daubert issue.

19           I can determine whether the methodology was  
20 appropriate in a simple -- well, I don't know that the --

21           MR. LOCKWOOD: In --

22           THE COURT: -- evidence will be simple, but a motion  
23 will be simple with respect to Daubert. We can deal with all  
24 that down the road.

25           But, getting the information, at the outset, seems to

1 me to be a legitimate --

2 MR. LOCKWOOD: Daubert doesn't speak to the  
3 qualifications of an expert who would take a large number of  
4 claims, whether it's 118,000, or 10,000 --

5 THE COURT: No. It speaks to the methodology.

6 MR. LOCKWOOD: -- (indiscernible) who would review  
7 those claims and tell a Court which ones were legally and  
8 factually valid.

9 THE COURT: Right. And so you'll argue that you  
10 can't --

11 MR. LOCKWOOD: There is no Daubert expert of that  
12 sort. I mean, that's not --

13 THE COURT: Well, we'll see.

14 MR. LOCKWOOD: Because, it's a matter of law.

15 THE COURT: Well --

16 MR. LOCKWOOD: Typically speaking, he --

17 MR. BERNICK: With respect, I think that we're  
18 talking a little bit at cross purposes.

19 We are not going to have experts who will opine as to  
20 legal issues. You and I will argue legal issues to the Court.  
21 We're not going to have an expert say, gee, in Alabama you can  
22 recover for exposure. What we would do is we would argue the  
23 legal issues, but the experts would translate our arguments  
24 into what claims, or what groups of claims are picked up by the  
25 arguments.

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1           A second thing, the Daubert dimension of this, you  
2 give the example of, you know, who's impaired, you know, what  
3 does impairment mean under State Law. That's one dimension of  
4 this, but that's not the principal dimension that will animate  
5 this process.

6           The Daubert issue goes to the reliability of the  
7 methodology that was used in gathering medical information. In  
8 exactly the same fashion as before Judge Newsome, we litigated,  
9 on Daubert grounds, whether dust sampling was an appropriate  
10 methodology, and that methodology had been used for all of the  
11 property claims, and he found it was not an appropriate  
12 methodology.

13           We're going to litigate on Daubert grounds whether  
14 the mass screening is an appropriate methodology, under the ILO  
15 standards themselves --

16           THE COURT: Well, okay. We're going to get to that  
17 issue when we get there, for today.

18           MR. BERNICK: Yes.

19           THE COURT: Because, I'm ready to move past this.  
20 So, finish your remarks --

21           MR. LOCKWOOD: Well --

22           THE COURT: -- Mr. Lockwood.

23           MR. LOCKWOOD: The point I'm trying to make is that,  
24 for example, on this methodology, in the State tort system, no  
25 State has adopted the ATS Standards for determining what is

1 impairment.

2           No State has adopted the proposition that some kind  
3 of "B" Reader isn't a good enough kind of "B" Reader. They  
4 cite statistics that the plaintiffs have got favored "B" Reader  
5 doctors, that some other experts of theirs think over read, by  
6 orders of magnitude, x-rays favorable to plaintiffs.

7           That sort of issue is decided when that expert is  
8 tendered to testify in a particular case and the opposing  
9 expert is tendered to testify, and the two experts testify.

10          All these doctors, for example, that they criticize  
11 and that they say we need to have a bankruptcy proceeding to  
12 deal with, number one, those doctors were first identified as  
13 issues in Manville, in the mid-1990's, and not one of them, to  
14 my knowledge, has been yet disqualified, from a Federal or a  
15 State --

16          THE COURT: But --

17          MR. LOCKWOOD: -- Court --

18          THE COURT: But, regardless --

19          MR. LOCKWOOD: -- on the grounds that they don't meet  
20 Daubert.

21          THE COURT: But, regardless, the information that the  
22 debtor wants, I think, is appropriate for an expert to take a  
23 look at.

24          Whether I'm going to consider it, what value I'll  
25 place on it, whether it meets Daubert or not, I think is an

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1 issue down the road.

2           What the debtor intends to do seems to me, in an  
3 estimation process, to be calculated to lead the relevant  
4 admissible evidence. And for a discovery on an estimation  
5 process, that's all I need.

6           I am going to direct you two, you and Mr. Bernick,  
7 Mr. Lockwood, to work out some mechanism, by which, if we don't  
8 have a bar date, because I'm -- for other purposes, I don't  
9 really see the need for a bar date. I'm not sure I see the  
10 need for one here.

11           But, I do need to make sure that we have some handle  
12 on whatever the appropriate sampling of the questionnaires to  
13 go out and get returned is, that we will have a legitimate  
14 across the board sample, number one.

15           And number two, that counsel for all of the present  
16 claimants understands that this estimation process is going  
17 forward, so if they want to submit that kind of questionnaire  
18 and have their own client's medical information included in it,  
19 they have the opportunity to do that, because they will be  
20 bound by the outcome of the estimation hearing.

21           So, that, I think, is what we need to do.

22           MR. LOCKWOOD: Okay. But -- let me just say one  
23 thing about this questionnaire process, Your Honor. Actually,  
24 two.

25           First, one of the problems with 118,000, is timing.

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1 While Mr. Bernick facilely suggested these law firms, if they  
2 file lawsuits, have at their fingertips the information  
3 necessary to answer a questionnaire, that's simply not  
4 necessarily true. You're not required --

5 THE COURT: Look, the trusts have been able to do it,  
6 and the pre -- have been able to do it --

7 MR. LOCKWOOD: The question is --

8 THE COURT: -- within a matter of --

9 MR. LOCKWOOD: Yes. The question is time.

10 THE COURT: -- several months.

11 MR. LOCKWOOD: How much time?

12 THE COURT: Okay.

13 MR. LOCKWOOD: Because --

14 THE COURT: Well, I think you two can --

15 MR. LOCKWOOD: -- you know, if you've got 10,000  
16 claimants, or 5,000 claimants that you have to fill out a  
17 multi-page questionnaire --

18 THE COURT: Yes.

19 MR. LOCKWOOD: -- for each one, that's a whole lot of  
20 work and it doesn't get done over night.

21 THE COURT: Yes.

22 MR. LOCKWOOD: The second point has to do with what  
23 the kinds of things that individual claimants know.

24 For example, product ID. Typically speaking in tort  
25 -- in the tort system of cases, you prove product ID not merely

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1 by the plaintiff's own recollection of where he worked and what  
2 he worked with, but co-worker depositions, invoices from the  
3 manufacturer showing product was delivered to a site where the  
4 worker worked, et cetera.

5 So, if a claimant is asked, you know, exactly how do  
6 you know that you were exposed to Grace asbestos and where,  
7 that information might be available not through the claimant,  
8 but by the lawyer, when he works up the case --

9 THE COURT: Well, that can be --

10 MR. LOCKWOOD: -- and gets --

11 THE COURT: Wait.

12 MR. LOCKWOOD: -- discovery from the debtor showing  
13 where its products were shipped to.

14 THE COURT: We're getting way ahead. Because, it  
15 seems to me that the debtor has certain information that can go  
16 onto the claim form at the outset, which is, what the debtor's  
17 products were, where they were delivered, and what period of  
18 time they were used in specific locations. And if a claimant  
19 doesn't fit within one of those locations, that's --

20 MR. BERNICK: And Your Honor, these are exactly the  
21 kinds of issues -- I actually am looking forward to this sit  
22 down session. I only ask that we both have a martini  
23 beforehand. And please --

24 THE COURT: Just one?

25 (Laughter)

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1           MR. BERNICK: And don't lock the door, because I've  
2 now turned 50, and I know Mr. Lockwood's over 50, and we may  
3 have to use the facilities during the course of this meeting.

4                             (Laughter)

5           MR. BERNICK: But, this is exactly the kind of thing  
6 that we ought to be able to take up, in the context of that  
7 conversation, rather than right now.

8           THE COURT: All right.

9           MR. BERNICK: For everything he says, I'm going to  
10 have an answer, and it's just not worth it.

11           THE COURT: In terms of using the facilities, why  
12 don't we take a ten-minute break and do just that.

13           And then I'll come back and we'll -- I'll hear from  
14 the other parties before I make final rulings on this, and --  
15 after a ten-minute recess.

16                             (Recess)

17           MR. BERNICK: Your Honor, if I could raise a -- I'm  
18 sorry.

19           THE COURT: Wait just a minute, Mr. Bernick.

20           MR. BERNICK: Sure.

21           THE COURT: Gentlemen, we have a substitute court  
22 reporter, since the other one is at lunch. So, when you speak,  
23 would you please identify yourself --

24           MR. BERNICK: Sure.

25           THE COURT: -- since she will not know who you are.

1 Okay. Thank you.

2 MR. BERNICK: I'm David Bernick and I represent the  
3 debtors.

4 Your Honor, just as a preliminary matter, I have said  
5 -- I've had a couple of conversations here and I know that the  
6 time is shortening. A couple things.

7 One, we spent all of our time this morning --

8 THE COURT: Yes.

9 MR. BERNICK: -- talking about personal injury.

10 And we're -- the debtors are very, very focused on  
11 also talking about moving forward with the traditional property  
12 damage claims, as well as the ZAI claims, where there has been  
13 no bar date.

14 And I don't know what it is that Mr. Baena and his  
15 colleagues had intended to address, but if we could make sure  
16 that we also address those things that are important, in order  
17 to keep those processes under way, that would be terrific.

18 Second --

19 THE COURT: Well, I don't know we're going to get  
20 through all of those issues today, so maybe we ought to figure  
21 out which ones you want to focus on, because I have my doubts  
22 that we'll get done with all that.

23 MR. BERNICK: Okay. Well, with respect to the  
24 traditional property damage claims, we already have the claim  
25 forms in and it's simply a question of them really moving

1 forward to establish, I think, a -- some kind of pre-trial  
2 schedule for the estimation that's associated with the  
3 traditional property damage claims.

4 You know, we've made a proposal along those lines.  
5 If Mr. Baena doesn't believe we should have the estimation,  
6 maybe that's an issue that he can address now.

7 And then to the extent that we are going to have the  
8 estimation, maybe that's something else that we can lock  
9 ourselves up in a room to talk about in more detail, which is  
10 the timing and substance of what we'd actually do on the  
11 pre-trial basis, for the estimation.

12 For ZAI, the big issue is establishing a bar date, so  
13 we can find out -- what that claimant population is.

14 THE COURT: Well, I don't think I want to go to the  
15 ZAI one yet, Mr. Bernick, and it's for this reason. I -- I'm  
16 really not yet much involved, even in the issue of the science  
17 trial.

18 And I thought the whole purpose for going through the  
19 science trial was to see whether or not a class proof of claim,  
20 if any claim, is appropriate. Whether a class proof of claim  
21 would be the way to go, as opposed to having individual  
22 claimants file.

23 So, if I set a bar date, and then notify -- I'm not  
24 even sure who we'll notify, at this point in time, because I  
25 haven't gotten through that evidentiary premise.

1           But, it seems to me that that issue ought to wait  
2 until at least the science trial is decided and we see A,  
3 whether there is some scientific support for the fact that  
4 there's property damage, at all, and B, if there is, whether it  
5 should be adjudicated in a class format.

6           MR. BERNICK: Yes. Here's the problem. And the  
7 reason that we're so focused on this is that right now, if Your  
8 Honor's focused on, you know, what does it take to get to a  
9 consensual plan until we have a claimant population, we have no  
10 clue.

11           They will say that there are a million people, a  
12 million homes out there. We'll say there's 100,000. And  
13 you've got an order of magnitude difference, just in what the  
14 size of the claimant population is.

15           We may find out that when it comes to people who are  
16 going to step forward and actually make a claim that there are  
17 very, very few of them. We think that that's exactly what's  
18 going to happen.

19           But, until you fix the population -- the number of  
20 claimants, it is almost impossible to talk about ZAI, unless  
21 Your Honor rules, that from a scientific point of view, the  
22 claims are going nowhere.

23           Instead of -- we thought about this and we said,  
24 well, why don't we ask that the Court rule on that issue and  
25 then we can go ahead, if we don't prevail, or if we prevail in

1 part, to then craft a bar date in the claim form. And the  
2 problem then is that more time passes before we find out who is  
3 a claimant.

4 So, what we thought we would do is ask for the bar  
5 date, but instead of having a detailed claim form like we were  
6 asking for before, we have a much simpler claim form that  
7 doesn't pose, in a sense, the risk of people going up and being  
8 required to scoop out stuff from their attic. So, we at least  
9 would get a claimant population.

10 We then would delay sending out the questionnaire,  
11 until Your Honor determined what you wanted to do, in terms of  
12 getting information from people and the like, what you thought  
13 the science trial was going to yield.

14 But, at least that way we're not holding off on  
15 advancing the cause, to find out this critical piece. We're  
16 going to need to know, at the end of the day, who the people  
17 are who are making a claim to begin with. Even if there's a --  
18 if a class certified, we wouldn't know how to resolve that  
19 class, or we wouldn't know how to resolve the case, until we  
20 knew who was actually going to make a claim.

21 So, we really need to know who's going to make a  
22 claim. So, that's exactly what we've done, is we've asked for  
23 a bar date, we've watered down the claim form, and it's very,  
24 very urgent, from our point of view, that we get this critical  
25 piece of data put in place. Because, otherwise, I don't know

1 how we resolve the ZAI claim consensually.

2 THE COURT: Well, I don't know how, until we get the  
3 notice out -- I thought the purpose for the science trial was  
4 to find out whether there was sufficient scientific evidence  
5 that there is actually going to be some form of property damage  
6 and, therefore, to craft a claim form around that outcome.

7 MR. BERNICK: Yes.

8 THE COURT: I don't know how you craft a claim form  
9 until that issue's determined, unless you want to say, assume,  
10 for -- without deciding right now, that there is damage to your  
11 home if you were subject to ZAI, then file a claim.

12 MR. BERNICK: Well -- and most claim forms -- and I  
13 think this is -- I believe -- I know this is accurate. Most  
14 claim forms -- most notices don't -- are neutral. And they're  
15 required to be neutral.

16 You -- it simply says, do you have this product in  
17 your house and if you do, are you making a claim for it. And  
18 they're not required to know the nature of the claim, or  
19 anything. They're just told, you know, if you have a claim,  
20 here it is.

21 We might even be able to craft something that says,  
22 it is claimed that this product does X, or Y, or Z, and  
23 provided that it's not argumentative, it's simply informational  
24 well, that's something else that -- there's no reason why we  
25 can't work that out.

1           But, the criticality of being able to find out who's  
2 going to make a claim is so overwhelming here, because of the  
3 inability to know what the population is that we're dealing  
4 with, that we think it's -- is that critical.

5           That we're -- we prepared -- be prepared to spend the  
6 time to craft the notice. We just want to get it out the door  
7 in a way that enables us to move forward and identify the  
8 population. If you do it by way of class, then you're  
9 guaranteed to delay understanding that critical piece of  
10 information until later. It's really the cart before the  
11 horse.

12           Let's find -- even in the First -- there's a New  
13 Jersey case, First Interregional Equity or something like that,  
14 where they ultimately decided to use a claim form that was done  
15 in the context of having established a bar date -- a class  
16 claim form, then you establish a bar date, and having the  
17 people come in. And at least there they knew that there were  
18 2,000 people who actually made a claim.

19           So, you know, that's the kind of information that we  
20 need. But, maybe if that could be addressed.

21           Second point is I had a brief conversation with Mr.  
22 Lockwood about, you know, where are things really going on  
23 Monday, and the like, and I suppose if we don't finish this  
24 afternoon, talking about just the things that we've talked  
25 about, that'll spill over.

150

1           But, beyond that the two things that were up for  
2 Monday were the exclusivity issue and then also the  
3 confirmation procedures. And I think that we at least don't  
4 see an urgency, right now, to resolve the confirmation  
5 procedures.

With respect to exclusivity, I think there's only  
been one objection, which comes from my dear friends over here  
representing the futures representative. I don't know that it  
makes sense, if we finish other things, to bring everybody back  
on Monday for that, as an in-person hearing.

11           Although, obviously, we're prepared to come back if  
12 that makes sense.

13 THE COURT: Well --

14 MR. BERNICK: And all that really means is that if we  
15 can vote --

16 THE COURT: I don't think we need to get to the  
17 confirmation procedures. I'm having enough trouble getting to  
18 the disclosure statement procedures, so --

19 (Laughter)

20 MR. BERNICK: Right.

THE COURT: -- let's knock them down one at a time.

22 So, the confirmation procedures, at this point, I  
23 think, can be deferred.

If you want to talk about the objection to  
exclusivity, today, I've read the stuff, I'll hear it, if

1 that's what you want to do. But, I really do think it would be  
2 a good idea for me to let you folks out early, although I  
3 understand they're now saying that this four to eight inches  
4 here, and twelve in Philadelphia, may not start until early in  
5 the morning. But, it seems to be a moving --

6 MR. BERNICK: Well, I think we still want to get out

7 --

8 (Laughter)

9 MR. BERNICK: We still want to get out of here.

10 (Laughter)

11 THE COURT: You don't want to stay and see the  
12 Steeler game here?

13 MR. BERNICK: I didn't listen to the weather.

14 (Laughter)

15 THE COURT: That's what I mean.

16 MR. BERNICK: But, let's -- on this -- there's some  
17 options. I think we just have to stay on course and I think  
18 that if we can focus on those two groups of people, that would  
19 be terrific.

20 THE COURT: All right. Mr. Kruger?

21 MR. KRUGER: Lewis Kruger, for the Official Unsecured  
22 Creditor's Committee. Your Honor, while this morning Mr.  
23 Bernick and Mr. Lockwood appeared to dominate the conversation  
24 about bar dates, and questionnaires, and the like, the reality  
25 of it is that our clients, our commercial creditors are the

1 ones who'll be most impacted by what may be the end result of  
2 an estimation process here.

3           We find that we're obliged to file proofs of claim in  
4 this Court. We have to demonstrate that W. R. Grace owes us  
5 money, either for money loaned, for goods and services pursuant  
6 to contracts, or otherwise. We need to identify why they owe  
7 us that money, how much they owe us, and the like.

8           It doesn't strike me as inappropriate for there to be  
9 a bar date for those who claim any claim against W. R. Grace,  
10 and it doesn't strike me as inappropriate for them, to me, to  
11 demonstrate why they believe they have a claim compensable by  
12 W. R. Grace.

13           That's not to say that ultimately the Court will  
14 determine what is indeed an appropriate level of information  
15 for them to provide, or whether or not the claims they assert  
16 are indeed compensable. But, it seems to me, as a threshold  
17 matter, particularly since all creditors are entitled to object  
18 to other creditor claims, that we have a standard to maintain,  
19 which is that there ought to be a bar date, there ought to be  
20 information provided, there ought to be questionnaires.

21           People should not really be able to -- sort of lie  
22 back in the weeds and say, some estimation process will take  
23 care of me.

24           We're entitled to know who are the creditors, who are  
25 the claimants, what is the nature of their claim, and why they

1 believe that they have some compensable injury which needs to  
2 be compensated by W. R. Grace.

3           THE COURT: Okay. Well, I appreciate that view  
4 point. It does seem to me, however, that 524 really does not  
5 require proofs of claim to be filed by tort claimants. And I  
6 think there is some reason for that.

7           Number one, not everyone knows that they have an  
8 existing claim, at the time. That's why they can be put into a  
9 future demand category. And number two, it doesn't necessarily  
10 make sense to look at an estimation process for purposes of  
11 allowance of the claim, in the pre-confirmation phase, at least  
12 if there's a consensual plan.

13           It seems to me that we can work out some kind of  
14 compromise that still provides the information that you are  
15 requesting, which I think is legitimate, i.e. who are the tort  
16 claims, who -- or at least in global terms, who are the tort  
17 claimants, who will be coming forward at a level that the  
18 debtor is going to have to recognize in the trust, and what  
19 does that do to the underlying unsecured creditor distribution.

20           I think, at this stage, to get a plan on the table,  
21 that's really all I need. Now, to get through confirmation, I  
22 don't know, maybe something more will be needed. But, I think  
23 at this stage, if we can at least estimate those numbers, we'll  
24 get a lot closer toward a consensual plan from all groups. So

25 --

1 MR. KRUGER: Maybe.

2 THE COURT: -- I want to move forward on the  
3 estimation side. I'm not saying that at some point I don't  
4 think a bar date might be appropriate, I'm just not sure we  
5 need it here, now.

6 MR. KRUGER: But, for those who certainly believe  
7 they had claims prior to the commencement of the Grace  
8 proceeding, now more than three years ago, since that, I don't  
9 understand any reason why they should not be obliged to file  
10 claims.

11 THE COURT: Well --

12 MR. KRUGER: They did assert a claim. Why are they  
13 not entitled to file a claim, like everybody else does?

14 And I don't know that it makes a difference that  
15 you're a tort claimant. There's nothing special about being a  
16 tort claimant. You're just another kind of creditor of this  
17 estate. And other creditors are entitled to look at your  
18 claim, and have a view as to whether or not that claim is an  
19 appropriate one to be compensated by Grace.

20 THE COURT: Well, I'm not sure that's the case,  
21 because of the fact that the claims are channeled to the trust  
22 and once the trust is --

23 MR. KRUGER: Futures may be.

24 THE COURT: Well, the -- the presents can be too.

25 MR. KRUGER: Possibly.

1           THE COURT: And to the extent that the presents are  
2 channeled to the trust, they essentially waive the claim  
3 against the debtor's estate, in favor of what the trust is  
4 going to pay them.

5           MR. KRUGER: Well, but that -- but, Your Honor,  
6 that's an illusion. Those funds come from the debtor's estate,  
7 so therefore creditors -- other creditors are entitled to look  
8 to see --

9           THE COURT: I don't --

10          MR. KRUGER: -- whether the funds that are going into  
11 that trust are appropriate.

12          THE COURT: I don't think the Court's view that as an  
13 illusion. I think they view it as a statutory requirement  
14 under 524.

15          But, I agree with you with your ultimate conclusion,  
16 which is creditors have the right to determine whether the  
17 distributions are fair and reasonable with -- coming either  
18 from the -- that the debtor would put into the trust, on the  
19 one hand, versus what the debtor would be paying to other  
20 creditors whose claims don't go into the trust, on the other.

21          But, I think the first piece of that is the  
22 estimation process.

23          MR. KRUGER: And a questionnaire of some kind.

24          THE COURT: Well, yes. I'm -- I think the  
25 questionnaire's a good idea, but it's not going to be 50 pages.

1 MR. KRUGER: Okay. That may be.

2 THE COURT: In fact, it's probably not going to be  
3 ten pages, so --

4 (Laughter)

5 UNIDENTIFIED MALE ATTORNEY: How long was Mr. Baena's  
6 questionnaire?

7 THE COURT: I don't know.

8 MR. BAENA: How long was my question?

9 UNIDENTIFIED MALE ATTORNEY: Yes.

10 UNIDENTIFIED MALE ATTORNEY: Your questionnaire.

11 UNIDENTIFIED MALE ATTORNEY: Your questionnaire.

12 UNIDENTIFIED MALE ATTORNEY: How many pages?

13 MR. BAENA: It was very long.

14 (Laughter)

15 MR. BAENA: And most of it was unnecessary.

16 (Laughter)

17 THE COURT: Okay. You --

18 MR. BAENA: I think it was six or seven pages.

19 THE COURT: But, does anybody -- before I turn to the  
20 issue of the property damage and the ZAI, does anybody else  
21 wish to be heard on the nature of the personal injury  
22 estimation hearing? Mr. Baena?

23 MR. BAENA: Judge, the only thing I would say in that  
24 regard is, and I think Mr. Kruger alluded to it in respect to  
25 his constituency -- forgive me, Scott Baena, on behalf of the

11 MR. BAENA: And secondly, of course, as Mr. Kruger  
12 alludes to, the value of those claims has a profound affect --

13 THE COURT: Yes.

14 MR. BAENA: -- on every constituency, and we're all  
15 going to be involved in -- on one side or the other, of that  
16 process.

17 So, I'm not asking to be locked in the same room, but  
18 I am asking that we have a point of entry --

19 THE COURT: Oh, sure.

20 MR. BAENA: -- before the hearing, so it's not a  
21 fete accomplished.

22 THE COURT: Oh, I didn't mean to suggest that it  
23 wouldn't be circulated to everybody else for comments, Mr.  
24 Baena.

25 But, I think that the two critical groups who will --

1 who will likely be presenting evidence, I mean, maybe others  
2 will too, but the likely two groups that will be presenting  
3 evidence -- or three, possibly, will be the debtor, the  
4 asbestos committee, and the futures rep.

5           And yes, if anybody else who's a recognized  
6 committee, you know, has some issue, you're entitled to be  
7 heard, and I'd certainly hear it, and, yes, I would agree that  
8 your -- you have to participate at some level in the process,  
9 setting up that estimation process.

10           But, I think the lion's share of the work should come  
11 from Mr. Bernick, Mr. Lockwood, and somebody representing the  
12 futures rep, because I think they will be taking the lead.

13           Am I incorrect? Does somebody else expect, at this  
14 point, to be presenting major substantive evidence, at the  
15 estimation hearing, on the personal injury tort liability and  
16 numbers. Okay.

17           So, yes, I expect the three of -- I didn't address  
18 the futures rep, because they've been over there very silent,  
19 but actually, I do include the futures rep in that process. I  
20 think the three of them need to take that -- to start that,  
21 getting an order together, and then circulate it to everyone,  
22 before it's presented to me.

23           If there are areas of disagreement, I'll hear those  
24 areas of disagreement. In all probability there aren't likely  
25 to be. Okay. Yes. Good afternoon.

1 MS. WARREN: Good afternoon, Your Honor. Mary  
2 Warren, for London Market Insurers.

3 Your Honor, I wanted to draw your attention, briefly,  
4 to something, before you move on to other subjects, in  
5 connection with the estimation procedures, or hearing.

6 Certain insurers of Grace, in this matter, interposed  
7 a limited objection to estimation motion and the case  
8 management motion, on the following grounds.

9 The thrust of our objection is to make sure that  
10 insurance neutrality is enforced, in connection with any  
11 estimation that emerges from the proceedings that the parties  
12 are going to work on together. Likewise, if anything is  
13 litigated, pursuant to the case management procedures, we want  
14 to make sure that insurance neutrality is enforced in that  
15 context as well.

16 The certain insurers generally support what the  
17 debtors are trying to do here, in terms of their plan.  
18 However, Mr. Bernick and Mr. Lockwood told you a story earlier  
19 today, about the Babcock proceedings, in which the plan started  
20 out as being somewhat along the lines of what the debtors are  
21 proposing now.

22 Later on, that plan was withdrawn and became an  
23 assignment of insurance rights plan, a purported adjudication  
24 of insurance rights plan, and that was done despite the debtors  
25 best intentions earlier on in the proceeding.

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1           We make no aspersions on the debtor's theories here,  
2 but the same thing could happen. And, therefore, the reason  
3 why we ask now, for insurance neutrality to be enforced, is  
4 because Your Honor seems to be contemplating that estimation  
5 will happen early on, will help set the framework for what  
6 happens later, who votes, et cetera.

7           We want to make sure that insurance neutrality  
8 language is included in any estimation order, any case  
9 management proceeding order --

10          THE COURT: I don't know about that. I don't know  
11 what the issues are, at this point in time. I don't know  
12 whether the debtor's going to propose a plan that does not  
13 impair insurance company rights, if in fact that's the kind of  
14 plan that we get to, ultimately.

15          The one thing that Combustion Engineering did do, is  
16 state what language has to be put in for insurance neutrality.  
17 It's not an issue I ever have to look at again. I'm going to  
18 use that language, period, end of story. So, if it's to be an  
19 insurance neutral plan, that language worked, that's the  
20 language we're going to use in this and every other case that  
21 has an insurance neutrality plan, until the Third Circuit or  
22 the Supreme Court say no. So, okay.

23          But, I don't know what the context of the plan will  
24 be yet, so if you think you have an interest in participating  
25 in the estimation, then just simply join in that process.

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1 MS. WARREN: Well, Your Honor, an alternative to that  
2 is to make sure that we are protected by having -- and exactly  
3 what Your Honor has in mind, is what we would propose here, is  
4 having that Combustion Engineering approved language included,  
5 by order of Your Honor, in any estimation order, any case  
6 management order that might emerge.

7 And Your Honor's -- is correct, the plan might  
8 evolve, but from what I'm hearing, estimation might evolve  
9 before the final plan is put in place.

10 THE COURT: I have no idea how insurance neutrality  
11 is somehow impacted by the estimation of the tort liability.

12 MS. WARREN: Well, Your Honor, let's say an  
13 estimation number is agreed -- let's say an aggregate number --

14 THE COURT: Yes.

15 MS. WARREN: -- is arrived at. You don't know  
16 whether later on, the debtor will, pursuant to a different  
17 plan, assert that that creates a UNR kind of result against  
18 insurers.

19 THE COURT: The only way to protect yourself is to  
20 join in the estimation process. I mean, at this stage of the  
21 game, that's the only thing I can tell you to do, so join in  
22 the estimation process.

23 In other cases I haven't had to go through it, so I  
24 haven't had to worry about binding the insurance companies. I  
25 do have to go through it in this case, so join.

1           If you're concerned about the consequences, join in  
2 the process.

3           MS. WARREN: Your Honor, I understand what you're  
4 saying, but when there's an opportunity to insert protective  
5 language in an estimation order, that we know the Third Circuit  
6 has already approved --

7           THE COURT: If the other parties are willing to do  
8 it, it's fine with me. But, I don't know, at this point, that  
9 there is consensus on insurance neutrality in this plan. If  
10 there is, fine. If there isn't, join in the process.

11           I am not prejudging plan confirmation issues and  
12 insurance neutrality is definitely a plan confirmation issue.

13           To the best of my recollection, it hasn't even come  
14 up in this case until now.

15           MR. BERNICK: It's very simple. Combustion  
16 Engineering was prepared to agree to insurance neutrality in  
17 the case. And the only issue was, what did neutrality mean?  
18 How did you word it, what impact it would have?

19           That is not the case in this case. We have not made  
20 a commitment to be insurance neutral here. I am -- as a  
21 consequence, I would endorse what Your Honor said, which is  
22 that if they want to participate, they can participate.

23           THE COURT: If --

24           MR. BAENA: Your Honor --

25           THE COURT: Yes, Mr. --

1           MR. BAENA: If I may, Scott Baena, on behalf of the  
2 property damage -- I -- by saying they can participate,  
3 obviously we weren't prepared to argue this today, we wouldn't  
4 concede their standing to participate, at this moment in time.  
5 And I hope by your direction -- or suggestion, perhaps is a  
6 better way to put it -- you're not conceding, or directing that  
7 they do have.

8           THE COURT: Mr. Baena, I haven't heard a word in this  
9 case, to the best of my recollection, about insurance  
10 neutrality, until this proceeding happened today. I'm not  
11 prepared to make any rulings on insurance neutrality, or  
12 insurance standing.

13           MR. BAENA: Right.

14           THE COURT: What I'm suggesting is that if they think  
15 they're going to be prejudiced, then they better take  
16 appropriate steps, whatever they are, to join in the process,  
17 because I'm not going to enforce an insurance neutrality  
18 provision.

19           That was something that in Combustion was somewhat  
20 agreed to, and in other cases has come up as an -- a  
21 representation by the debtors that the plans were intended to  
22 be insurance neutral.

23           When the debtor said that the plans are intended to  
24 be insurance neutral, so that the insurers have no claims  
25 against the debtor and are not entitled to vote, then I'm

1 willing to make sure that the plan is "insurance neutral."

2           But, I don't think I have that in this case, so I'm  
3 not prejudging plan issues and if you think you need to protect  
4 yourself in some other way, all I'm suggesting is that you take  
5 whatever steps you think you need to take.

6           MS. WARREN: Well, Your Honor, respectfully, I think  
7 we're hearing exactly why it would be useful to get this  
8 language in the plan early. The debtors have just told you  
9 they're not going to agree to it. Mr. Baena has just told you  
10 that we might not have standing.

11           So, we're already getting caught between a rock and a  
12 hard place, and one way to enforce insurance neutrality is to  
13 start enforcing it now.

14           THE COURT: But, I'm -- I'm not in a position of  
15 enforcing it unless the plan says, this is going to be an  
16 insurance neutral plan, in which case I will do my best to  
17 write an order that makes sure that the plan is, in fact,  
18 carrying out insurance neutrality.

19           But, if the debtor isn't committing not to change  
20 some rights or obligations of the insurance company, I'm not  
21 going to give an insurance neutral plan. That may give you  
22 voting rights that you don't have in other cases, so if that's  
23 the case, exercise them.

24           But, I'm not prejudging plan issues. I'm getting to  
25 one thing and one thing only, and that's the estimation of the

1 personal injury tort liability, period. And possibly value,  
2 not just the liability, but the value.

3 MS. WARREN: And we'd like to make sure that that  
4 estimation does not veer into areas that I believe Your Honor  
5 has opined, in other cases, that you don't want to get into.

6 My understanding is that you don't consider this a  
7 proper forum to determine State Law coverage issues.

8 THE COURT: There aren't going to be any coverage  
9 issues in the estimation hearing. The debtor may very well say  
10 this is what the level of my insurance assets are, and this is  
11 how I propose to use them. I mean, that's something that may  
12 happen.

13 But, in terms of State Law coverage, I'm not getting  
14 into insurance issues in this hearing. If I'm asked to in some  
15 other context, I'll deal with it then, but that's not the  
16 purpose of this estimation hearing.

17 MR. BERNICK: I think in order to maybe cut to the  
18 chase, I think what counsel's concerned with is that the record  
19 would then be usable in connection with some subsequent  
20 insurance action. Obviously, the issue of insurance coverage  
21 is not, from our point of view, going to be teed up in the  
22 estimation, but the record is going to be whatever it's going  
23 to be.

24 THE COURT: It is.

25 MR. BERNICK: And we are not agreeing that the record

1 cannot later be used for whatever purpose the law dictates.

2 THE COURT: Then, you know, if that's the case, in  
3 all probability, the insurers may have standing and they may  
4 participate, because there will be some prejudice to the --  
5 potential -- not actual prejudice, to the insurer's rights.

6 So, all I can tell you is take whatever steps you  
7 think are appropriate, but I'm not going to write insurance  
8 neutrality into a plan that doesn't provide for it.

9 MS. WARREN: Well, Your Honor, we will work with the  
10 debtors to see if we can reach any agreement. If not, you can  
11 probably expect us -- to see us quite a bit. Thank you.

12 THE COURT: Okay. All right. Anybody else? Okay.  
13 Yes?

14 MR. CHEHI: Your Honor, Mark Chehi, of Skadden Arps,  
15 for Sealed Air, on this very specific point.

16 And that is it goes to the proof of claim issue  
17 raised by committee counsel. I think we have a concern, or are  
18 just going to reserve rights and perhaps make a presentation to  
19 the Court at a later date on, perhaps, the need for a proof of  
20 claim process to ensure that we've identified all the claimants  
21 and they're all getting adequate notice of the proceedings, for  
22 purposes of a plan confirmation, objection, and voting, and the  
23 like.

24 And that's important to us and to other parties who  
25 would be protected by the 524(g) and 105 injunctions, to make

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1 sure that they've had their opportunity, have notice of those  
2 injunctions issuing, and take objection before they issue.

3 THE COURT: Okay. Well, some process is going to  
4 have to be employed for that end, Mr. Chehi, and whether it's a  
5 bar date, or something on the ballots, if in fact they vote, is  
6 a different issue.

7 So, I'm not in the process of disallowing claims, if  
8 I don't have a ballot process. I'm probably also in the  
9 position of permitting votes, if I don't have some disallowance  
10 of claims. So, it's something that we'll have to address  
11 later.

12 MR. CHEHI: And our concern, again, is just  
13 identifying the folks who are entitled to vote and have an  
14 opportunity to be heard among the asbestos claimants creditor  
15 group, to the extent they have -- there's not been a bar date  
16 notice, it's hard to determine exactly who they all are.

17 THE COURT: It's been done in every other asbestos  
18 case that's been pending in the United States since Manville,  
19 so I don't think it's going to be an issue for this one.

20 MR. CHEHI: Okay. Thank you, Your Honor.

21 THE COURT: We'll figure out the notice. Thank you.  
22 All right. Anybody else on the personal injury issue? Okay.

23 Then, the futures rep, the asbestos committee, and  
24 the debtor, are to meet and draft a case management order for  
25 estimation of personal injury actions -- personal injury

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1 matters -- and then, circulate it to all -- I'll just call them  
2 parties in interest, which include the insurance companies.

3 Can we get to this issue in the February omnibus?

4 Can you folks get something together in time to circulate it  
5 prior to the February omnibus, so that I can deal with it then?

6 MR. LOCKWOOD: We can certainly strive to do that,  
7 Your Honor, and I don't see any reason, right now, why we  
8 couldn't succeed.

9 THE COURT: All right. The debtor's to put it on the  
10 agenda for the February omnibus, if possible, and the March  
11 omnibus at the -- at the very latest.

12 I think that should give you enough flexibility to  
13 get everybody together, if it's agreed upon by all parties in  
14 interest, then you can file -- put it into the appropriate  
15 evidentiary -- or, pardon me, hearing binder, and give me a CNO  
16 and I'll sign it, in all probability. I obviously reserve the  
17 right to make sure that I agree with the dates and can schedule  
18 the hearings on my own calendar, but in all probability, I'll  
19 agree to the substance of it.

20 If you can't agree, then it should go forward along  
21 the normal objection process period, so that I have contested  
22 matters set for that omnibus, which is why I don't know if  
23 you'll make the February hearing.

All right. Mr. Baena, on the property damage?

25 (Pause)

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1           MR. BAENA: Judge, before I get into the estimation  
2 issues, if I may, I -- in -- for 200 years I think Courts  
3 entered orders and people obeyed them, but in this case the  
4 Court orders something and then we argue about it.

5           And about two and a half hours ago, I think you  
6 ordered that asbestos claimants are going to have a right to  
7 vote, under this plan. And then we argued again, well Mr.  
8 Lockwood and Mr. Bernick argued again.

9           I just want to ensure that we're past that issue,  
10 nothing happened in the course of that argument that changed  
11 the Court's ruling.

12          THE COURT: Well, I don't know where we stand on the  
13 issue of the right to vote. I think what we're doing is  
14 looking at an estimation hearing, and the outcome of that  
15 estimation hearing will probably govern whether there is or is  
16 not impairment in the financial sense, that I was getting to  
17 earlier.

18          MR. BAENA: Well, Judge, as Mr. Lockwood pointed out,  
19 there are two sides of the voting issue. We've got the 1126  
20 side and, frankly, I think the issue that you just framed and  
21 your discussion earlier today, really went to the 1126 issue.

22          But, then we also have the 524(g) voting issue, and I  
23 don't think it's affected by any of the processes that we're  
24 talking about. And I also don't think it's really highly  
25 debatable about the fact that 524(g) gives people who are going

1 to have their claims channeled to this trust a right to vote.

2           If the Court isn't past that, I would like, before I  
3 discuss estimation, to at least address those issues, if you're  
4 taking the matter under advisement.

5           MR. BERNICK: Your Honor, if -- as a point of  
6 process, a -- if we are now going back to revisit those issues,  
7 I'm happy to do it. But, we are then probably not going to get  
8 to any of the remaining issues.

9           Mr. Baena's clients are in a fundamentally different  
10 position, with respect to impairment, than are the personal  
11 injury client. And I'm happy to take that up.

12          But, to have more than one counsel now stand up and  
13 address what 524(g) means, what 1126(1) means, or (f) means, or  
14 whatever it is, means, is basically going over exactly the same  
15 ground. And we think it's critical today, that we reach some  
16 of these other issues.

17          THE COURT: Well, Mr. Baena, with respect to whether  
18 or not the personal injury claimants can vote, how is that  
19 relevant to your constituency?

20          MR. BAENA: Judge, we also objected to the  
21 confirmability of the plan, on the grounds that it stripped all  
22 asbestos claimants, be they personal injury or property damage  
23 claimants, from the right to vote. That plan doesn't  
24 anticipate our vote either.

25          THE COURT: Okay. Well, on that issue, I think I'd